IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

TRC.No. 71 of 2003

TA.1127/1998 of S.T.A.T.ADDL.BENCH,ERNAKULAM

PETITIONER: APPELLANT

FOTOFAST CALICUT
FOTOFAST HOUSE, M.G.ROAD,
KOCHI – 35.

BY ADV. SRI.U.K.RAMAKRISHNAN
SRI.E.K.MADHAVAN
SRI.P.V.LOHITHAKSHAN
SRI.SANDEEP.E.

RESPONDENT: RESPONDENT

STATE OF KERALA.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ

THIS TAX REVISION CASE HAVING COME UP FOR ADMISSION ON 19/07/2007, ALONGWITH T.R.C.NO.89 OF 2003 AND CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

T.R.C. NOS. 71, 89, 90, 91, 109 & 162 OF 2003

Dated this the 19th July, 2007

O R D E R

H.L.DATTU, C.J.

The assessee is engaged in the business of processing of colour prints and developing printed photos. The assessee had filed returns claiming the benefit of exemption from payment of tax under the Kerala General Sales Tax Act (for short 'the Act'), relying upon the notification issued by the State Government granting exemption to SSI Units.

2. The assessing authority had rejected the returns filed by the assessee and thereafter, had completed the assessments by adding five times the value of goods found at the time of inspection. Aggrieved by the said order, the assessee carried the matter before the First Appellate Authority. The First Appellate Authority had allowed the appeal, set aside the orders passed by the assessing authority for the assessment years 1986-87 to 1991-92 and remanded the matter for re-assessment in accordance with law.

3. Aggrieved by the said remand order passed by the First Appellate Authority, the assessee had carried the matter in appeal before the Kerala Sales Tax Appellate Tribunal in T.A.No.1127 of 1998 and connected matters. The Tribunal has confirmed the

findings of the First Appellate Authority. Aggrieved by the orders passed by the Tribunal, the assessee is before us in these Tax Revision Cases.

4. The assessee has framed the following questions of law for our consideration and decision. They are as under:

> "i) Whether the Tribunal is right in law and on facts in its conclusion that the work of a photographer is works contract and not one of skill and labour?
>
> ii) Whether the Tribunal is right in law in holding that the decision in Rainbow Colour Labs Case reported in 118 STC 9(SC) is overruled by subsequent decision in Associated Cement Co. Ltd., Case 2001(4) SCC 593?
>
> iii) Whether the Tribunal is right in holding that the petitioner cannot rely on the earlier decision of the Tribunal in TA.753/97 which has become final?"

5. The Tribunal has confirmed the orders passed by the First Appellate Authority, who had set aside the orders passed by the assessing authority and had directed the assessing authority to reconsider the orders of assessment in accordance with law keeping in view the observations made by the Apex Court in more or less similar cases.

6. Since the orders passed by the First Appellate Authority and the Tribunal are only orders directing the assessing authority to redo the matter in accordance with law following certain observations made

by the Apex Court, we are of the opinion that neither the First Appellate Authority nor the Tribunal had committed any error whatsoever, which would call for our interference in a revision filed under Section 41 of the Act, for the reason, the revisional jurisdiction of this Court is limited in the sense, this Court can entertain a revision petition if, for any reason, the Tribunal has erroneously decided the question of law or has failed to decide the question of law. In that view of the matter, these Tax Revision Cases require to be rejected and they are rejected. However, we make it clear, that, if for any reason, the assessee is aggrieved by the fresh order of assessment passed by the assessing authority after the orders of remand passed by the Tribunal, the assessee is at liberty to question the same before the appropriate forum in accordance with the provisions of the Act.

7. Consequently, the pending interlocutory applications are also rejected.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/

H.L.DATTU, C.J. &
K.T.SANKARAN, J.

T.R.C.NOS.71, 89, 90, 91, 109 &
162 OF 2003

O R D E R

19th July, 2007